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C O N F I D E N T I A L SECTION 01 OF 02 SARAJEVO 001628

SIPDIS

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TAGS: [PGOV](#) [ECON](#) [PREL](#) [KCRM](#) [BK](#)

SUBJECT: BOSNIA - BIH CONSTITUTIONAL COURT DECISIONS SEND
SHOCK WAVES

REF: A. SARAJEVO 1342

[B](#). SARAJEVO 1572

[C](#). SARAJEVO 1547

Classified By: MICHAEL J. MURPHY FOR REASONS 1.4 (B) AND (D)

[1](#). (C) SUMMARY: Within the past several weeks, the BiH Constitutional Court has handed down three controversial decisions that have reinforced the growing view that it is not up to the task of defending the rule of law in Bosnia. In a pair of contradictory decisions, the Court upheld the constitutionality of a December 2007 Republika Srpska (RS) law that allowed the RS to issue frozen currency bonds, and at the same time ruled that provisions of the 2006 state-level law on foreign currency savings, which established the state's competency, were constitutional (Ref A). The Court also partially upheld a case filed by the Syrian-born foreign fighter Imad Al-Hussein AKA Abu Hamza al-Suri and ordered the case back to the State Court for review -- even though it had jurisdiction to decide on the case (Ref B). In doing so, the Court kept Abu Hamza's legal case alive and prevented the Bosnian government from deporting Abu Hamza to Syria. Moreover, in a precedent-setting move, the Court halted the high-profile corruption trial of some top officials of the Herzegovina-Neretva Cantonal (HNK) Government who claimed that their human rights were being violated because the state did not have jurisdiction in their case (Ref C). END SUMMARY

Court Sides with RS on Frozen Foreign Currency Bonds

[2](#). (C) During its October 3-4 session, the Constitutional Court handed down two contradictory decisions regarding the frozen foreign currency bonds issue. It upheld the constitutionality of a Republika Srpska law passed in December 2007 allowing it to issue bonds to repay holders of frozen foreign currency accounts confiscated during the 1992-1995 war, which the RS government did in February of this year. State-level Tri-Presidency Members Haris Silajdzic and Zejlko Komsic, as well as Party for Democratic Action (SDA) President Sulejman Tihic, had challenged the RS law on the grounds that it violated the BiH constitution. According to the Court's press release, it had determined that the RS could issue bonds because both the state and entities are tasked with the protection of human rights, apparently including the rights of frozen foreign currency account holders. This decision runs counter to the Court's 2005 decision that old foreign currency accounts fall within the exclusive competence of the state and held the state

responsible for establishing a legislative framework for resolving the issue to give the state the mandate to deal with this issue. At the same time, the Court rejected the challenge by Serb member of the Tri-Presidency Nebojsa Radmanovic to the constitutionality of two provisions of the 2006 state-level law on frozen foreign currency, adopted in the wake of the Court's 2005 ruling.

Keeps Abu Hamza's Legal Case Alive

13. (C) During the same session, the Constitutional Court rejected Abu Hamza's claims that he would face torture if he is deported to Syria and that his right to a fair trial had been violated in his asylum case, but said his right to family life and to an "effective remedy" as provided for in the European Convention for Human Rights (ECHR) may be jeopardized if he is deported from Bosnia. As part of its findings, the Court sent the case back to the State Court for adjudication. OHR's lawyers maintained that in doing so, the Court had departed from its own rules of procedure by deciding not to rule on a case involving human rights, which is within its purview. They further charged that the Constitutional Court had misinterpreted the ECHR's right to an "effective remedy" provision by deciding on the content of the decision that was appealed -- the Bosnian government's refusal to grant Abu Hamza temporary residence -- rather than on Abu Hamza's access to remedy. OHR's lawyers said that in the Abu Hamza case, the court had, in effect, simply relinquished its jurisdiction.

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And Raises Questions about the State Court's Jurisdiction

14. (C) OHR, the State Prosecutor's Office, and other legal experts are also concerned about the implications of the Constitutional Court's September 17 decision to temporarily halt the high-profile trial of Herzegovina-Neretva Canton (HNK) officials accused of abuse of office and corruption, which began in March of this year at the State Court. (Note: The case had languished at the entity-level until international investigators and prosecutors took it over. End Note) Lawyers for these officials essentially argued that their defendants' rights to a fair trial were being violated because in their view, it is the entity court system, not the State Court, that has jurisdiction in the case. They went on to say that, by actively seeking jurisdiction, the State Court appeared to be prejudiced against their clients and may not constitute an impartial tribunal were the trial to continue. The Constitutional Court concluded that the lawyers had raised important human rights-related issues.

15. (C) Outside legal experts argue that the Constitutional Court's decision in the HNK case was problematic for two reasons. First, the decision ignored a state law that grants jurisdiction to the State Court in cases of serious economic or organized crime even when the alleged underlying offense was an entity-level offense. In addition, it ignored established precedent that the State Court has jurisdiction in such cases. If the Constitutional Court applies this reasoning to its final ruling, it would seriously handicap the State Court's ability to combat organized and serious economic crime. Second, the decision halted a trial midstream, which was unprecedented. The Constitutional Court should have allowed the first instance trial and any subsequent appeal to conclude before reaching judgment about a constitutional matter associated with the proceedings. (Note: There has been speculation within Bosnia's legal community that the Constitutional Court judges may have been bribed, and that they now plan to refrain from issuing a final ruling on the matter until international prosecutors and judges have left the State Court. One contact told us legal officers at the Constitutional Court were so dismayed

by the judges' legal reasoning that they refused to draft the decision. End Note)

COMMENT

¶6. (C) The Constitutional Court's recent decisions on the RS frozen foreign currency bonds, Abu Hamza, and the HNK cases have reinforced the growing view that it can not effectively carry out its mandate. The RS frozen foreign currency and HNK cases are especially troubling since they strengthen the hands of RS and other politicians determined to dismantle or weaken the state. The decisions on the frozen foreign currency bonds allow the RS to reclaim a state-level competency. The HNK case opens a Pandora's Box by giving RS Prime Minister Dodik and other officials from both entities an opening to question the jurisdiction of the State-level Court and Prosecutor's Office in organized crime and corruption cases. RS authorities have already cited the cantonal corruption case to justify their failure to cooperate with the State Prosecutor's Office and the State Investigative Protective Agency (SIPA) in their investigation of corruption in RS state government building contracts (Ref C).

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